

CLEAR

and present danger



OVERVIEW

In this lesson, students will assume the identity of lawmakers, judges, writers, and protestors during times in American history when freedoms of speech and press were limited because the country was on the brink of war (1798) or fighting one (World War I). Using primary source documents, they will evaluate issues of freedom of speech and the press versus national security and public safety. Finally, they will draft a new constitutional amendment that clearly defines the government's powers in times of national crisis.

[The Sedition Act of 1798 abridges the] right of freely examining public characters and measures, and of free communication among the people.

—JAMES MADISON

We are going to do everything we can to harmonize the constitutional rights of individuals with every legal capacity we can muster to also protect the safety and security of individuals.

—JOHN ASHCROFT

CRITICAL ENGAGEMENT QUESTION

What constitutional limitations can the government place on speech and press in times of national crisis?

OBJECTIVES

Students will:

- understand the reasons for and objections to the Sedition Act of 1798.
- understand the reasons for and objections to the Sedition Act of 1918.
- analyze primary source documents including the Sedition Act of 1798, the Sedition Act of 1918, the Constitution and the Bill of Rights.
- write an amendment to the Constitution that explains if, when, how, and by whom individual rights can be suspended in times of crisis.
- apply their analysis to modern constitutional issues raised by the War on Terror.

STANDARDS

NCSS: Strands 2, 6, and 10

CCE: (9-12): IA1, VB1, VB2, VB5, and VD2

NCTE: Standards 1, 2, 3, 4, 5, 6, 7, 11, and 12

STUDENT MATERIALS

Handout A: Sedition Free Association

Handout C: Sections of the Sedition Act of 1798

Handout D: The Sedition Act of 1918

Handout E: Legislative Powers

TEACHER MATERIALS

Transparency Master A: The First Amendment

Handout B: Voices on Sedition Cards

RELEVANT RESOURCES

Equal Time: 1, 2, 3, and 5

Glossary of Journalism Terms

Landmark Supreme Court Cases

Media Milestones

NOTES



BACKGROUND/HOMEWORK

10 minutes the day before

- A. Begin with a brief discussion of sedition: speech that incites resistance, disloyalty, or hatred of the government
- B. Have students complete **Handout A: Sedition Free Association**.



WARM-UP

10 minutes

- A. Give each student a quote card from **Handout B: Voices on Sedition Cards**. Have students read their quote and decide if it represents a view for or against government restriction of speech.
- B. Have students stand up and walk around the room, sharing their statements aloud with others. Their goal is to find other students whose quote's ideas and historical context match with theirs. Have them form new groups as they find classmates with matching quotes. Students should end up in four groups: for/against the Sedition Act of 1798 and for/against the Sedition Act of 1918.
- C. Once students are in groups, evaluate whether they are organized correctly according to their quotes. If not, discuss how that may reveal that the issues of 1798 were still being discussed in 1918, and how they may continue today. Give students a moment to assemble into correct groupings.

For/1798: 1, 2, 9, 10, 11, 21

Against/1798: 3, 5, 6, 12, 19, 20

For/1918: 4, 7, 8, 13, 14, 22

Against/1918: 15, 16, 17, 18, 23, 24



HISTORICAL CONTEXT/CONSTITUTIONAL ISSUE

5 minutes

As you discuss the historical context, invite students to read their quotes aloud if you call their quote number. Quote numbers appear in [brackets] below.

Put up Transparency **Master A: The First Amendment** and discuss the wording of the First Amendment. Explain to

students that the Founders wished in particular to protect the expression of political speech. In a society where the government derives its power from the people, an informed and engaged citizenry is essential. [11]

There have been times in U.S. History when the federal government has limited freedom of speech. In wartime in particular, the government has placed limits on what it has called "sedition" or speech that incites disloyalty or hatred of the government. [5]

The Sedition Act of 1798 was passed by the Federalist-controlled Congress in 1798 and signed into law by President John Adams. The law was designed to silence Republican critics of his administration and to quiet support for the French in their war with England. Twenty-four editors, writers, and others were arrested, and ten were convicted under the Sedition Act. The United States remained out of the war between France and England, which was one of Adams's goals. [1] The law was allowed to expire by the Republican-controlled Congress in 1801. [10]

The Sedition Act of 1918 (which amended the Espionage Act of 1917) targeted those who interfered with the draft as well as those individuals who publicly criticized the government — including negative comments about the flag, military, or Constitution. [15]

More than 2000 people were prosecuted under the Sedition Act of 1918, though many were later pardoned or had their sentences commuted. The Espionage and Sedition Acts were repealed in 1921. [22]



ACTIVITY

35 minutes

- A. Distribute **Handout C: The Sedition Act of 1798** to the for/against the Sedition Act of 1798 groups. Give **Handout D: The Sedition Act of 1918** to the groups for/against the Sedition Act of 1918. Additionally, give copies of the Bill of Rights and **Handout E: Legislative Powers** to all students.
- B. Tell students that for the activity, they will be assuming the identity and opinion of the individual on their quote card. Have students read the powers of the federal government in the Constitution and Bill of Rights, and then read the Sedition Acts on **Handouts C or D**. Have students use the documents to gather evidence to support their identity's

position on the constitutionality of the Act. Have them highlight passages that support their position.

- C. When students have finished, have them jigsaw into pairs with individuals for/against each Act. Students should explain who they are and perform a role-play of a discussion that might have taken place between the two people. Encourage students to base their arguments on the documents.

Suggested pairings: 1798: Matthew Lyon/Sentencing Judge; Ben Franklin/Abigail Adams; Timothy Pickering/Thomas Jefferson; Thomas Jefferson/John Adams; John Adams/David McCullough; James Madison/Massachusetts state legislature.

1918: Emma Goldman/Woodrow Wilson; Eugene V. Debs/Woodrow Wilson; Kate Richards O'Hare/Sentencing Judge; John H. Clarke/Oliver Wendell Holmes; Jane Adams/J. Edgar Hoover; Rose Pastor Stokes/A. Mitchell Palmer

- D. Have students work together in pairs to write a new amendment to the Constitution, specifying what powers the government has (if any) to suspend freedom of expression and the press in wartime. Students should consider the War on Terror when drafting their amendments. Amendments should:

- Explain what defines a national crisis: a declared war, any war, an invasion, a rebellion, a riot, a natural disaster, an environmental threat, an economic threat, etc.
- Explain the procedure of how the Federal government will take emergency power.
- Specify who will make the decisions: the President, Congress, the Supreme Court, a combination of the three, etc.?

- E. Have students share their proposed amendment with the class, and have students vote on the best amendment.



HOMEWORK

- A. Have students create a two or three slide PowerPoint presentation with a biographical sketch of the individual from their **Handout B** quote card.
- B. Have students write two or three paragraphs in response to the questions:
 - If the Federal government should have extraordinary powers during a crisis, what type of governmental system should be put in place to protect against tyranny and despotism? Explain.
 - Or, if the federal government does not have any extra powers, how can the government adequately provide security? Explain.
 - Should the government ever violate the Constitution in order to preserve the Constitution?

EXTENSIONS

- A. Ask students to research instances in American history where the government has restricted freedom of speech in times of national crisis. Have them present their findings in an essay or PowerPoint presentation sharing what they have learned about the Sedition Act of 1798, *Ex Parte Milligan* (1866) Executive Order 9066, *Hirabayashi v. U.S.* (1943), and *Korematsu v. United States* (1944).
- B. Have students research the USA-PATRIOT Act and write a one-page essay answering the following questions: What is the USA-PATRIOT Act? What are popular criticisms and defenses of it? Are the surveillance authorities granted to the government in sections 213, 214, 215, and 218 constitutional? Why or why not? The PATRIOT Act can be found at <http://news.findlaw.com/cnn/docs/terrorism/hr3162.pdf>.
- C. Have students research the cases below and summarize the way each decision defined the balance between free speech and national security. Students can begin their research at <http://www.BillofRightsInstitute.org>:

Schenk v. United States (1919)
Debs v. United States (1919)
Abrams v. United States (1919)
Gitlow v. People of New York (1925)

SEDITION FREE ASSOCIATION

Directions: The following are phrases the government has used to describe speech that can be constitutionally limited during times of national crisis. Read each term or phrase and brainstorm four or five other words or situations that might be associated with it.

TERM/PHRASE	WORDS OR SITUATIONS YOU MIGHT ASSOCIATE WITH IT
<i>clear and present danger</i>	
<i>substantive evils</i>	
<i>proper authority</i>	
<i>by word or act oppose the cause of the United States</i>	
<i>insurrection, riot, unlawful assembly</i>	
<i>unlicensed abuse of government</i>	
<i>base and unfounded calumny (lie)</i>	
<i>passion, disloyalty, anarchy</i>	
<i>conspiracy</i>	

<p>1</p> <p>"A pen is certainly an excellent instrument to fix a man's attention and to inflame his ambition...I knew there a need of [the Sedition Act] and I consented."</p> <p>–President John Adams, who signed the Sedition Act of 1798 into law</p>	<p>2</p> <p>"You must be well acquainted with the mischiefs which flow from an unlicensed abuse of government."</p> <p>–Judge sentencing Congressman Matthew Lyon, one of the first people charged under the Sedition Act of 1798</p>
<p>3</p> <p>"It is quite a new kind of jargon to call a representative of the people an opposer of government because he does not, as a legislator, advocate and acquiesce in [agree to] every proposition that comes from the executive."</p> <p>–Congressman Matthew Lyon, one of the first people charged under the Sedition Act</p>	<p>4</p> <p>"I urge you to enact such laws [that] do nothing less than save the honor and self-respect of the nation. Such creatures of passion, disloyalty, and anarchy must be crushed out.... For what we are seeking now, what in my mind is the single thought of this message, is national efficiency and security."</p> <p>–President Woodrow Wilson in a 1915 speech to Congress</p>
<p>5</p> <p>The Sedition Act attacks the "right of freely examining public characters and measures, and of free communication among the people."</p> <p>–James Madison, in a resolution he wrote for the Virginia legislature</p>	<p>6</p> <p>"A little patience, and we shall see the reign of witches pass over, their spells dissolve, and the people, recovering their true sight, restore their government to its true principles."</p> <p>–Thomas Jefferson, in a letter, after the passage of the Sedition Act</p>

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"The plain purpose of their propaganda was to excite, at the supreme crisis of the war, disaffection, sedition, riots, and, as they hoped, revolution, in this country for the purpose of embarrassing and if possible defeating the military plans of the Government in Europe. The language of these circulars was obviously intended to provoke and to encourage resistance to the United States in the war...."

– Justice John H. Clarke, on the conviction of five people for violating the Espionage Act of 1918

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"The Communist propaganda technique is designed to promote emotional response with the hope that the victim will be attracted by what he is told the Communist way of life holds in store for him. The objective, of course, is to develop discontent and hasten the day when the Communists can gather sufficient support and following to overthrow the American way of life."

–J. Edgar Hoover, President Woodrow Wilson's assistant attorney general

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"The infamous Sedition Act must be seen in the context of the time, and the context was tumult and fear."

–Historian David McCullough, on President John Adams

10

"A sedition law is "wise and necessary" to defend against secret attacks by foreign or domestic enemies.

–Massachusetts state legislature, about the Sedition Act of 1798

11

"I wish the laws of our country were competent to punish the stirrer up of sedition, the writer of base and unfounded calumny (false charges). This would contribute as much to the peace and harmony of our country as any measure."

–Abigail Adams, in a letter to her husband, President John Adams

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"Adams did not ask for or encourage [the Sedition Act] but neither did he oppose it. Its passage and its signature were to be rightly judged by history as the most reprehensible acts of his presidency."

–Historian David McCullough, on President John Adams

13	<p>“...Underneath my own determination to drive from our midst the agents of Bolshevism (communism), I...ask: what will become of the United States Government if these alien radicals carry out the principles of the Communist Party?”</p> <p>–A. Mitchell Palmer, President Woodrow Wilson's attorney general</p>	14	<p>“There are citizens of the United States, I blush to admit, born under other flags but welcomed under our generous naturalization laws to the full freedom and opportunity of America, who have poured the poison of disloyalty into the very arteries of our national life...”</p> <p>– President Woodrow Wilson, in a 1915 speech to Congress</p>
15	<p>“I look upon the Espionage Law as a despotic enactment in flagrant conflict with democratic principles and with the spirit of free institutions....”</p> <p>–Eugene V. Debs, in a 1918 statement as he was being sentenced to ten years in prison for an anti-war speech</p>	16	<p>“The free expression of the hopes and aspirations of a people is the greatest and only safety in a sane society.”</p> <p>–Emma Goldman, magazine publisher and founder of the No Conscription League who was sentenced to two years in prison under the Sedition Act</p>
17	<p>“No government which is for the profiteers can also be for the people, and I am for the people while the government is for the profiteers.”</p> <p>–Rose Pastor Stokes, in a letter to the Kansas City Star, for which she was sentenced to ten years in prison in 1917</p>	18	<p>“I regret that I cannot put into more impressive words my belief that in their conviction upon this indictment the defendants were deprived of their rights under the Constitution of the United States.”</p> <p>–Supreme Court Justice Oliver Wendell Holmes, on the Espionage Act of 1918</p>

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"They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety."

– Benjamin Franklin, 1759

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"The definition of free speech and press is the right of Americans to think freely and to speak and write what they think."

– President Thomas Jefferson, in his 1801 inaugural address

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"Because we have the right to speak and publish our opinions, it does not necessarily follow that we may exercise it in uttering false and malicious slanders against our neighbor or our government, any more than we may under cover of freedom of action knock down the first man we meet, and exempt ourselves from punishment by pleading that we are free agents."

– Timothy Pickering,
Secretary of State under
President John Adams

22

"This is a nation of free speech; but this is a time for sacrifice, when mothers are sacrificing their sons. Is it too much to ask that for the time being men shall suppress any desire which they may have to utter words which may tend to weaken the spirit, or destroy the faith or confidence of the people?"

– Judge sentencing World War I
protestor Kate Richards O'Hare
to prison in July, 1917

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"But, Your Honor, all through this trial... there ran the charge of a crime, a crime of which I was accused. And this crime ...was the same charge that was brought against the first slave rebellion...It was the charge that was brought against Moses and Spartacus...George Washington and Patrick Henry, William Lloyd Garrison and Wendell Phillips, and it was the same crime that was charged against Jesus of Nazareth when he stood at the judgment bar on Pontius Pilate. The crime is this: 'She stirred up the people.'"

*—Kate Richards O'Hare,
in her statement before being
sentenced to five years in prison
for violating the Sedition Act
of 1918*

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"Hundreds of poor laboring men and women are being thrown into jails and police stations because of their political beliefs. In fact, an attempt is being made to deport an entire political party....And what is it these radicals seek? It is the right of free speech and free thought; nothing more than is guaranteed to them under the Constitution of the United States, but repudiated because of the war."

—Jane Adams, in a 1919 speech

SECTIONS OF THE SEDITION ACT OF 1798

SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, which are or shall be directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the government of the United States, from undertaking, performing or executing his trust or duty, and if any person or persons, with intent as aforesaid, shall counsel, advise or attempt to procure any insurrection, riot, unlawful assembly, or combination, whether such conspiracy, threatening, counsel, advice, or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanor, and on conviction, before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years...

SECTION 2. And be it farther enacted, That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed,

uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years....

Source: "An Act for the Punishment of Certain Crimes Against the United States." *The Avalon Project at Yale Law School*. <http://www.yale.edu/lawweb/avalon/statutes/sedact.htm>

THE SEDITION ACT OF 1918

SECTION 3. Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies, or shall willfully make or convey false reports, or false statements, ...or incite insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct ...the recruiting or enlistment service of the United States, or ...shall willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government of

the United States, or the Constitution of the United States, or the military or naval forces of the United States ...or shall willfully display the flag of any foreign enemy, or shall willfully ...urge, incite, or advocate any curtailment of production ...or advocate, teach, defend, or suggest the doing of any of the acts or things in this section enumerated and whoever shall by word or act support or favor the cause of any country with which the United States is at war or by word or act oppose the cause of the United States therein, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than 20 years, or both....

Source: "The Sedition Act of 1918." U-S-History.com.
<http://www.u-s-history.com/pages/h1345.html>

Excerpt 1: U.S. Constitution, Article 1, Section 1

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Excerpt 2: U.S. Constitution, Article 1, Section 8

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

...To establish post offices and post roads;

...To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

...To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.